

APPEAL NO. 041534  
FILED AUGUST 12, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 25, 2004. The hearing officer determined that the appellant's (claimant) impairment rating (IR) is 12% as assessed by Dr. JC.

The claimant appeals, referring to the confusion that exists in applying the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides) and Texas Workers' Compensation Commission (Commission) Advisory 2003-10, signed July 22, 2003. The claimant urges that we give presumptive weight to the designated doctor's report and adopt the 32% IR. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant, a teacher, sustained a compensable injury on \_\_\_\_\_, when she tripped and fell, falling on her left hip. The claimant sustained injuries to her left hip, low back, and neck. Preoperative cervical spine x-rays were performed on January 22, 2003. The claimant had multilevel anterior disectomy and fusion at C3-6 performed on April 15, 2003, by Dr. S. Maximum medical improvement (MMI) was not an issue and was not addressed.

Dr. S certified MMI and in a report dated August 6, 2003, assessed a 7% IR. Although Dr. S recites that he used the fourth edition AMA Guides he apparently used a range of motion (ROM) model and only rated the cervical spine. Dr. D was appointed as the designated doctor and in a report dated October 16, 2003, certified MMI and assessed a 27% IR. Dr. D assessed a 25% impairment for Diagnosis-Related Estimate (DRE) Cervicothoracic Category IV, and 2% impairment for left hip loss of ROM combined for a 27% IR. Dr. JC, the carrier's independent medical examination doctor, in a report dated November 13, 2003, certified MMI and assessed a 12% IR based on 5% impairment for DRE Cervicothoracic Category II, 5% impairment for Lumbosacral Category II and 2% impairment for left hip loss of ROM. The major difference in ratings is the multilevel cervical surgery.

Dr. JC's report was sent to the designated doctor and by letter addendum dated December 3, 2003, Dr. D responded that Advisory 2003-10 paragraph 2(b) states that "multilevel fusion meets the criteria for DRE Category IV," and stated that his IR had not changed. In a peer review report dated December 29, 2003, Dr. CC basically agreed with Dr. JC's interpretation regarding the rating of multilevel spinal surgery impairments.

Additional requests for clarification were sent to the designated doctor together with statements that Advisory 2003-10 for grading multilevel fusions were to be applied if preoperative x-rays were not performed. Dr. D in responses dated February 10, 2004, and April 6, 2004, (after a reexamination) continued to apply Advisory 2003-10 although adding a 5% impairment for DRE Lumbosacral Category II to arrive at a 32% IR. Dr. CC testified at the CCH and in evidence are letters from the Commission's medical advisor and another doctor regarding the IR and the application of Commission Advisories.

The hearing officer determined that because the claimant had preoperative cervical flexion/extensions x-rays, Advisory 2003-10 does not apply and that the designated doctor misapplied the advisory and the fourth edition AMA Guides. The hearing officer further found that even if the designated doctor's reports had been given presumptive weight "the great weight of other credible medical evidence . . . would be contrary to the designated doctor's cervical rating."

The claimant's appeal stresses the "inconsistencies" among the doctors in their application of the AMA Guides and that she should not be penalized because the doctors cannot agree how to interpret the AMA Guides. In Texas Workers' Compensation Commission Appeal No. 041429-s, decided August 4, 2004, we considered a similar fact situation where the designated doctor in that case had applied Advisory 2003-10 even though there were presurgery roentgenograms and stated that under Advisory 2003-10 "a rating for multilevel spinal surgery under subsection b is permissible 'if preoperative x-rays were not performed.'" We agree with the hearing officer's interpretation of Advisory 2003-10 and the AMA Guides.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS WORKERS' COMPENSATION SOLUTIONS** and the name and address of its registered agent for service of process is

**RUSS EDWARDS  
101 HIGHWAY 281, SUITE 304  
MARBLE FALLS, TEXAS 78654.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Veronica L. Ruberto  
Appeals Judge